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July 11, 2023

Denied as moot in
light of order at
Dkt. 68.

VIA ECF ONLY

Hon. Robert W. Lehrburger, U.S.M.J.
United States Courthouse 500 Pearl Street,
Courtroom 18D
New York, NY 10007

SO ORDERED:

7/11/2023

HON. ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Re: Martin J. Benzing, et al. v. Tully Construction Co., et al
United States District Court for the Southern District of New York
Case No.: 21 Civ. 5315 (PGG)(RWL)

Dear Judge Lehrburger:

We represent Third-Party Defendant Structural Services, Inc. in the above-referenced matter. This is in response to plaintiffs' letter dated July 10, 2023, for a ruling regarding the continuation of the deposition of plaintiff Martin Benzing. Further, we write to you in accordance with Your Honor's Part Rules.

As such, Third-party Defendant Structural Services Inc. requests this Court:

- 1) Grant leave pursuant to Rule 30(d)(1) extending the time specifically for third-party defendant to question plaintiff, Martin Benzing, for an additional 4 hours; and
- 2) Upon completion of the deposition of Martin Benzing, compel plaintiff Anastacia Benzing to appear for deposition, followed by the corporate witness on behalf of Defendants/Third-Party plaintiff, Tully Construction Inc. and Posillico Civil Inc. ("third-party plaintiffs"), in compliance with the order of witnesses agreed upon by all parties on May 31, 2023;

The deposition of plaintiff Martin Benzing commenced on June 28, 2023. However, plaintiff's counsel had previously requested that his client's deposition be conducted over the space of two days in order to accommodate Mr. Benzing. Counsel agreed to this accommodation. On June 29, 2023, third-party defendant immediately requested the continuation of plaintiff's deposition to continue since questions remain regarding liability, and questions regarding the injuries claimed by plaintiff have not yet been reached. All counsel conferred at that time without resolution. All counsel conferred again on July 10, 2023, regarding additional time to depose Mr. Benzing but could not reach an agreement.

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Third-party defendant submits that this matter is not a simple personal injury case but concerns an alleged construction site accident where plaintiff seeks to hold defendants and third-party defendants responsible for a grave injury due to a traumatic brain injury, in addition to other injuries which allegedly required surgery. Under these circumstances, third-party defendant should be provided the time and opportunity to question plaintiff regarding both the mechanism of his injuries, as well as the severity of the injuries claimed.

I. Continuation of Plaintiff's Deposition

Fed.R.Civ.P 30 (1)(d) provides that this Court can allow additional time consistent with Rule 26 (b)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impeded or delay the examination. (See *Pierre v. City of New York*, No. 1:20-CV-05116 (ALC) (VF), 2022 WL 2384150 (S.D.N.Y. Jul. 1, 2022; *Robinson v. De Niro, Arista Records LLC v. Lime Group LLC*) Further, FRCP 26 requires that the parties have a full opportunity to obtain information.

Third-party defendant has not had to obtain information concerning the allegations against it regarding liability due to the facts that plaintiff was asked questions and shown documents, photographs, contracts and background that required time to go through. Considering the issues of the case as described in plaintiff's and defendant/third-party plaintiff's pleadings, coupled with the amount of damages sought, we should be given the opportunity to questions plaintiff's damages (See FRCP 26(b)(2)(C)(i)-(iii)).

Third-party defendant seeks additional time of approximately one hour and a half to question plaintiff regarding his purpose at the job site on the date of loss, and approximately two and a half hours to question plaintiff regarding his claims of grave injury caused by traumatic brain injury, which he claims has caused him to be unable to work since the date of loss.

Counsel agrees that the continued deposition of Martin Benzing can be completed virtually in order to accommodate Mr. Benzing.

II. Order of Depositions

Third-party defendant requests that the deposition of its corporate witness be stayed pending the completion of the depositions of both plaintiffs and that of defendant-third/party plaintiffs Tully Construction On May 31, 2023 (See ECF document #65) all parties appeared before this Court and agreed to a schedule of dates, as well as the order in which each witness was to appear for examination. At this time, neither plaintiffs' nor defendant/third-party plaintiff's depositions have been completed.

III. Conclusion

As set forth above, it is requested that this Court grant additional time to complete the deposition of plaintiff Martin Benzing, in light of the complexity of issues and the severity of the injuries claimed. Third-party defendant further seeks an Order compelling plaintiffs and defendant/third-party plaintiff to appear and complete their depositions, as agreed to in the Order dated May 31, 2023, prior to proceeding with other depositions, out of order, including that of third-party defendant.

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Thank you for your attention to tis matter.

Very truly yours,

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DJT/skm